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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,268	11/26/2003	John Nohl	60130-1968 / 04MRA0070	8863

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EXAMINER

TRAN, DIEM T

ART UNIT PAPER NUMBER

3748

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/724,268

Applicant(s)

NOHL ET AL.

Examiner

Diem Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

***Claims 1-5, 7-11, 13-15, 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Rim (US Patent 6,739,579).***

Regarding claims 1, 10, 14, Rim discloses an exhaust valve assembly comprising:  
a valve plate (50) movable within an exhaust pipe between an open and closed position, and an electric actuator (70) for moving said valve plate (see Figure 4).

Regarding claims 2, 15, Rim further discloses a valve neck for supporting said electric actuator (70) a distance from said exhaust pipe (44) (see Figure 4).

Regarding claim 3, Rim further discloses a support housing mounted to said valve neck for supporting said electric actuator (70) (see Figure 4).

Regarding claims 4, 11, 17, Rim further discloses a support housing supported by said valve neck, said support housing comprising a plate disposed between said electric actuator (70) and said exhaust pipe (44) for shielding said actuator from heat (see Figure 4).

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Regarding claim 5, Rim further discloses that said valve neck comprises a tubular cross section (see Figure 4).

Regarding claims 7, 8, Rim further discloses that said electric actuator comprises a linearly and a rotatably movable element (see Figure 4).

Regarding claims 9, 13, 18, Rim further discloses an actuation tube (62) having a tubular cross section rotatable by said electric actuator for moving said valve plate (50) (see Figure 4).

Regarding claim 19, Rim further discloses that said valve plate (50) creates a tuning effect replicating an exhaust pipe of a diameter smaller than said exhaust pipe (see Figures 4, 5).

Regarding claim 20, Rim further discloses that an actuation tube (62) having a solid shaft (see col. 4, lines 3-6).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 6, 12, 16, 21, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rim (US Patent 6,739,579).***

Regarding claims 6, 12, 16, Rim discloses all the claimed limitations as discussed in claims 3, 15 above, however, fails to disclose that said valve neck comprises a cross-

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section transverse to said exhaust pipe smaller than a cross section of said support housing in a direction transverse to said exhaust pipe.

With regard to the limitation directed to the size of the cross-section of the valve neck, it is the examiners position that the such would have been an obvious matter of design choice well within the level of ordinary skill in the art depending on design variables such as spacing and weight considerations, etc...Moreover, there is nothing in the record which establishes that the claimed ranges present a novel or unexpected result (see *In re Kuhle*, 526 F.2d 553, 188 USPQ 7(CCPA 1975)).

Regarding claims 21, 22, Rim discloses all the claimed limitations as discussed in claim 14 above, however, fails to disclose the actuation tube having a hollow portion.

With regard to the limitation directed to the shape of actuation tube, it is the examiners position that an actuation tube having hollow portion would have been an obvious matter of design choice well within the level of ordinary skill in the art, since it has been held that a change in the shape of the element involves only routine skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966).

### ***Conclusion***

Any inquiry concerning this communication from the examiner should be directed to Examiner Diem Tran whose telephone number is (703) 308-6073. The examiner can normally be reached on Monday -Friday from 8:30 a.m.- 5:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion, can be reached on (703) 308-2623. The fax number for this group is (703) 872-9306.

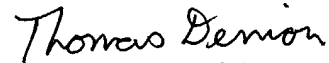
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.



Diem Tran  
Patent Examiner  
Art unit 3748

DT  
July 8, 2004



THOMAS DENION  
SUPERVISORY PATENT EXAMINER  
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